No. 80-1172

In the Supreme Court of the United States

OCTOBER TERM, 1980

LEROY AND LEONA BUTTKE, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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The question presented in this federal income tax case is whether amendments to the minimum tax enacted on October 4, 1976, that increased its effective rate and broadened its applicability, can constitutionally be applied to transactions consummated during the entire taxable year beginning January 1, 1976.

The pertinent facts may be summarized as follows: In March, 1976, petitioners sold certain farmland for a cash sales price of $216,000. Because their basis in the property was $41,240, they realized a gain of $174,760 on the sale. After taking into account the deduction for one-half of net capital gains then permitted by Section 1202 of the Internal

Revenue Code of 1954, (26 U.S.C.),[1] petitioners included the remaining one-half of this gain ($87,380) in their taxable income. They paid income taxes of $18,420.45 for 1976 (Pet. App. 6; R. 4).[2] Petitioners, however, did not report any liability for the minimum tax resulting from this sale. On audit, the Commissioner determined that petitioners were subject to the increased minimum tax rates, enacted on October 4, 1976, and made retroactive for taxable years beginning after December 31, 1975. See Section 301(g)(1) of the Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1553 (Pet. App. 5-6).

Petitioners contend that the 1976 amendments to the minimum tax provisions could not constitutionally be applied to transactions entered into prior to the enactment of those amendments. This case is controlled by the Court's recent decision in *United States* v. *Darusmont*, No. 80-243 (Jan. 12, 1981). There the Court held, on virtually identical facts, that the 1976 amendments to the minimum tax could constitutionally be applied to transactions consummated during the entire taxable year beginning January 1, 1976. Indeed, in so ruling, the Court cited the decision below with approval (slip op. 4, 8).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

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[1]For years beginning after October 31, 1978, this deduction was increased to 60% of the net capital gain. Revenue Act of 1978, Pub. L. No. 95-600, Section 402, 92 Stat. 2867.

[2]"R." refers to the record appendix bound with petitioners' brief in the court of appeals.

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